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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,872	04/25/2001	Antonio J. Grillo-Lopez	P 0280609/2000-30-154A	4921

909 7590 08/23/2006

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EXAMINER

UNGAR, SUSAN NMN

ART UNIT PAPER NUMBER

1642

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/840,872

Applicant(s)

GRILLO-LOPEZ, ANTONIO J.

Examiner

Susan Ungar

Art Unit

1642

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

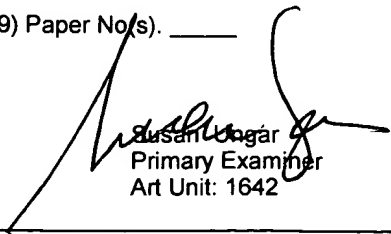
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 56-60 and 62-74.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No.(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

  
Susan Ungar  
Primary Examiner  
Art Unit: 1642

Continuation of 11. does NOT place the application in condition for allowance because: (1) Claims 56-60, 62-74 remain rejected under 35 USC 103 for the reasons previously set forth in the paper mailed April 10, 2006, pages 2-5.

Applicant summarizes Examiner's position drawn to the rejection under 35 USC 103 in a number of office actions starting with the position held in the first official action mailed 10/23/02.

Applicant reiterates arguments drawn to the lack of nexus between intrathecal treatment of CNS lymphomas by anti-Fas antibodies and anti-CD20 antibodies. The argument has been previously considered but has not been found persuasive for the reasons of record. In particular to reiterate, given the known efficacy of antibodies, that is anti-CD20 antibodies, against B-cell lymphomas (Anderson), given the known efficacy of treatment of CNS B-cell lymphomas by intrathecal administration of antibodies, that is anti-Fas antibodies (Caligiuri), it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have substituted antibodies known to be useful to treat B-cell lymphomas, that is, anti-CD20 antibodies, for the antibodies known to treat B-cell lymphomas, that is anti-Fas antibodies, with a reasonable expectation of success for the reasons of record.

Applicant argues that Examiner did not previously consider arguments drawn to inability to extrapolate the suitability of one antigen target for another due to differences in antigen expression profiles including localization, density, expression levels etc. The argument has been considered but contrary to Applicant's arguments these arguments were in fact previously considered, it is suggested that Applicant review page 4 of the previous office action wherein these arguments were considered but were not found to be persuasive.

Applicant reiterates arguments drawn to different modes of action of anti-Fas and anti-CD20 antibodies. The argument has been previously considered and not found to be persuasive for the reasons previously set forth.

Applicant reiterates arguments drawn to the unexpected success of anti-CD20 antibodies for the treatment of CNS lymphomas and Applicant points to Pollack et al, submitted after final, to support the surprising nature of the claimed invention. The arguments were previously considered and not found to be persuasive for the reasons of record. The Pollack et al reference has not been and will not be considered because Applicant has not presented good and sufficient reasons why it was not previously submitted.

Applicant reiterates arguments drawn to different modes of action and the requirement for FcR-expressing NK cells for the apoptotic mechanism of action of anti-CD20 antibodies and apparently argues that at the time the invention was made, the activity of FcR-expressing NK cells in the CNS was uncertain. The argument has been considered but has not been found persuasive because no evidence has been presented demonstrating the uncertainty of activity of NK cells in the CNS at the time the invention was made. The arguments have been carefully considered but have not been found persuasive and the rejection is maintained.

(2) Claims 56-60, 62-74 remain rejected under Obviousness Type Double Patenting for the reasons previously set forth in the paper mailed April 10, 2006, pages 5-6.

Applicant reiterates arguments as set forth above. The arguments have been considered but not found persuasive for the reasons set forth above.